



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2021-0156]**

**RIN 1625-AA00**

### **Safety Zone; Potomac River, Between Charles County, MD and King George County, VA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain waters in the Potomac River. This action is necessary to provide for the safety of persons, property, and the marine environment from the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge, which will occur from 7 a.m. on March 22, 2021, through 9 p.m. on March 26, 2021. This rule will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

**DATES:** This rule is effective from 7 a.m. on March 22, 2021, through 9 p.m. on March 26, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0156 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410-576-2674, email [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On March 16, 2021, Skanska-Corman-McLean, Joint Venture, notified the Coast Guard that from 7 a.m. on March 22, 2021, to 9 p.m. on March 26, 2021, it will be setting the tub sections at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge at Pier 44, which is adjacent and to the east of the federal navigation channel. The operation requires using two large crane barges and other marine equipment positioned within the federal navigation channel. This operation will impede vessels requiring the use of the channel.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because construction operations, involving simultaneous crane heavy lifts, at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge must occur

within the federal navigation channel. Immediate action is needed to respond to the potential safety hazards associated with bridge construction. It is impracticable and contrary to the public interest to publish an NPRM because we must establish this safety zone by March 22, 2021.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge conducted within the federal navigation channel.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP Maryland-National Capital Region has determined that potential hazards associated with bridge construction starting March 22, 2021, will be a safety concern for anyone within the federal navigation channel at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge construction site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being constructed.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from 7 a.m. on March 22, 2021, through 9 p.m. on March 26, 2021. The safety zone will cover all navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21'50.96" N, 076°59'22.04" W, thence south to 38°21'43.08" N, 076°59'20.55" W, thence west to 38°21'41.80" N, 076°59'29.90" W, thence north to 38°21'49.70" N, 076°59'31.40" W,

and east back to the beginning point, located between Charles County, MD and King George County, VA. The regulated area is approximately 300 yards in width and 270 yards in length.

This regulation requires that the bridge owner post a sign facing the northern and southern approaches of the navigation channel labeled “BRIDGE WORK—DANGER—STAY AWAY” affixed to the sides of the on-scene marine equipment and vessels operating within the area of the safety zone. This provides on-scene notice of the safety zone. This notice will consist of a diamond shaped sign (minimum 4 feet by 4 feet) with a 3-inch orange retro reflective border. The word “DANGER” will be 10 inch black block letters centered on the sign with the words “BRIDGE WORK” and “STAY AWAY” in 6 inch black block letters placed above and below the word “DANGER,” respectively, on a white background.

The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the tub sections are being set at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge at Pier 44, which is adjacent and to the east of the federal navigation channel. Except for marine equipment and vessels operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The COTP will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 (previously codified in 33 U.S.C. 1232) and 46 U.S.C. 70052 (previously codified in 50 U.S.C. 192).

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size, duration, and the time-of-year of the safety zone. The bridge construction operations within the federal navigation channel are being conducted during the winter/non-peak season, when vessel transits in this area of the channel are infrequent. Vessel traffic not required to use the navigation channel will be able to safely transit around the safety zone. Such vessels may be able to transit to the west of the federal navigation channel, as similar vertical clearance and water depth exists under the next bridge span to the west. This safety zone will impact a small designated area of the Potomac River for approximately 110 hours, but coincides with the non-peak season for recreational boating.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 110 total hours that will prohibit entry within a portion of the Potomac River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are

asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0156 to read as follows:

#### **§ 165.T05-0156 Safety Zone; Potomac River, Between Charles County, MD and King George County, VA.**

(a) *Location.* The following area is a safety zone: All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21'50.96" N, 076°59'22.04" W, thence south to 38°21'43.08" N, 076°59'20.55" W, thence west to 38°21'41.80" N, 076°59'29.90" W, thence north to 38°21'49.70" N, 076°59'31.40" W, and east back to the beginning point, located between Charles County, MD and King George County, VA. These coordinates are based on datum WGS 84.

- (b) *Definitions.* As used in this section---

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a



Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone.

Marine equipment means any vessel, barge or other equipment operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement.* This safety zone will be enforced during the period described in paragraph (f) of this section. A "BRIDGE WORK—DANGER—STAY AWAY" sign facing the northern and southern approaches of the navigation channel will be posted on

the sides of the marine equipment on-scene within the location described in paragraph (a) of this section.

(f) *Enforcement period.* This section will be enforced from 7 a.m. on March 22, 2021, through 9 p.m. on March 26, 2021.

Dated: March 17, 2021

Joseph B. Loring,  
Captain, U.S. Coast Guard,  
Captain of the Port Sector Maryland-NCR.  
[FR Doc. 2021-05964 Filed: 3/19/2021 8:45 am; Publication Date: 3/22/2021]